

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

NOTICE OF PROPOSED RULEMAKING

[Notice Published September 7, 2012]

“Class II-L Identification Methods Amendments, 2012”

Title 14 of the California Code of Regulations (14 CCR),

Division 1.5, Chapter 4, Subchapters 4, 5, 6, Article 6 – Watercourse and

Lake Protection

Amend:

**§§ 916.9 [936.9, 956.9](c)(4) Protection and Restoration in Watersheds
with Threatened or Impaired Values.**

§§ 916.9 [936.9, 956.9](g) Class II Watercourses

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules. The proposed amendments are intended to clarify the Board’s intent with regard to identification and protection of watercourses designated as “Class II-Large” (Class II-L).

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, November 7, 2012, starting at 8:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Monday, October 22, 2012. The Board will consider only written comments received at the Board office by that time and those written comments received in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments

to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Public Resources Code Sections 4551 and 4562.7. Reference: Public Resources Code Sections 4512, 4513, and 4551.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is authorized under Public Resources Code Sections 4551 and 4562.7 to adopt Forest Practice Rules for the protection of streams. Public Resources Code Section 4562.7 requires, among other things, that the Board of Forestry and Fire Protection (Board) adopt rules to prevent “unreasonable effects on the beneficial uses of the waters of the state.” In September 2009, the Board adopted a comprehensive revision of watercourse protection rules for timber operations now commonly referred to as the “Anadromous Salmonid Protection Rules.” These Rules included the new designation of a “Class II-Large” (Class II-L) watercourse to be differentiated from the previously existing “standard Class II” (Class II-S) watercourse.

During the initial implementation phase of the Board's newly adopted regulations, members of the regulated public expressed concerns about the Department of Forestry and Fire Protection's (CAL FIRE's) interpretation and enforcement of the Class II-L identification and minimum protection distance provisions. Specifically, it was contended that CAL FIRE's interpretation of the Class II-L regulations did not conform to the plain-English reading of the Rule text. As the Class II-L protection requirements are more restrictive than the Class II-S requirements, the implications of CAL FIRE's allegedly more inclusive interpretation of the Class II-L provisions appeared to be significant.

Based upon the testimony received by the Board from both the regulated public and regulatory agencies, it appears that the adopted Class II-L rule language has resulted in significant differences of opinion. The confusion and controversy exhibited in the testimony at numerous meetings leads the Board to conclude that a rule amendment to further clarify the intent and implementation of the Class II-L identification provisions should be considered.

The most significant benefit anticipated from the adoption of the regulation is an immediate improvement in regulatory certainty for owners and managers of commercial timberland. The proposed regulation is the result of ongoing dispute over the interpretation of an existing rule section. At a minimum, this dispute will be resolved as a result of the proposed action.

Whether or not adoption of the proposed regulation will have an effect on the level of environmental protection is unclear. It is unknown just how many Class II watercourse segments would be affected by the proposed regulations. The maximum protection distance has been clarified in the proposed regulation to be 1,000 feet or the total length of Class II watercourse. This is understood to be an increase in the protection distance, though this same distance appears to have been imposed under the existing regulations as well. Regardless, it may be presumed that the level of protective effect upon the environment will not be reduced as a result of this proposed regulation. This is largely due to the combined effect of the entire Forest Practice Rule Article from which the proposed regulation has been excerpted for clarifying improvement.

The proposed regulation is not expected to have an effect upon public health and safety, worker safety, the prevention of discrimination, or the promotion of fairness or social equity. Neither is the proposed regulation expected to result in an increase in the openness and transparency in business and government.

The proposed regulation is consistent and compatible with existing Forest Practice Rules for identification and protection of watercourses and lakes.

DISCLOSURES REGARDING THE PROPOSED ACTION

- The results of the economic impact assessment prepared pursuant to GC § 11346.5(a)(10) for this proposed regulation indicate that it will not result in an adverse economic impact upon the regulated public or regulatory agencies.
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- While it may be speculated that the proposed regulation could benefit the environment, it is not expected to affect the health and welfare of California residents or improve worker safety.
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The cost of timber harvest planning and operational mitigations are not likely to be significantly affected by the proposed regulation.
- Effect on small business: No effect to small business is anticipated as the proposed rulemaking attempts to promote regulatory certainty through adopting of clarifying rule amendments to existing rule sections.
- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- Significant effect on housing costs: None

- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 616-8643

The designated backup person in the event Mr. Huff is not available is Mr. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request. When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Eric Huff
Regulations Coordinator
Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Class II-L Identification Methods Amendments, 2012

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§§ 916.9 [936.9, 956.9](c)(4) Protection and Restoration in Watersheds with Threatened or Impaired Values.

§§ 916.9 [936.9, 956.9](g) Class II Watercourses

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules. The proposed amendments are intended to clarify the Board's intent with regard to identification and protection of watercourses designated as "Class II-Large" (Class II-L).

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

At a meeting in September 2009, the Board adopted new Forest Practice Rules for "Protection and Restoration in Watersheds with Threatened or Impaired Values." Among other elements of the new Rules was a new watercourse classification and protection system for "Class II-Large" watercourses (Class II-L). As a result of the Board's 2009 rule adoption, watercourses classified as Class II-L receive a higher level of protection through operational restrictions. The practical effect of these new protections is that commercial timber management in proximity to Class II-L watercourses is more often than not wholly prevented from occurring, even where management had historically been permitted.

During the initial implementation phase of the Board's newly adopted regulations, members of the regulated public expressed concerns about the Department of Forestry and Fire Protection's (CAL FIRE's) interpretation and enforcement of the Class II-L identification and minimum protection distance provisions. Specifically, it was contended that CAL FIRE's interpretation of the Class II-L regulations did not conform to the plain-English reading of the Rule text. As the Class II-L protection requirements are more restrictive than the Class II-S requirements, the implications of CAL FIRE's allegedly more inclusive interpretation of the Class II-L provisions appeared to be significant.

Based upon the testimony received by the Board from both the regulated public and regulatory agencies, it appears that the adopted Class II-L rule language has resulted in significant differences of opinion. The confusion and controversy exhibited in the testimony at numerous meetings leads the Board to conclude that a rule amendment to further clarify the intent and implementation of the Class II-L identification provisions should be considered.

SPECIFIC PURPOSE OF THE REGULATION

Article 6, Watercourse and Lake Protection

Section 916.9(c)(4) [§ 936.9(c)(4), § 956.9(c)(4)] This rule section is proposed to include the modifying text, “significant influx of.” This text modification is necessary to further clarify that Class II-L watercourses are a source of sustained, rather than intermittent, water flow and nutrient movement to Class I watercourses at the peak of the summer months.

Section 916.9(g) [§ 936.9(g), § 956.9(g)]

§ 916.9(g)(1) [§ 936.9(g)(1), § 956.9(g)(1)] This section once again includes the modifying text, “significant influx of” to further clarify that Class II-L watercourses are a source of sustained, rather than intermittent, water flow and nutrient movement. This section is also proposed to include a text modification to clarify that identification of Class II-L must include “direct observation” in the field as well as the office-based methods currently specified in the existing regulation. This proposed modification is necessary to clarify the Board's intent that identification of Class II-L watercourses includes field verification methods.

§ 916.9(g)(1)(A) [§ 936.9(g)(1)(A), § 956.9(g)(1)(A)] One word in this section is proposed to be modified for editorial purposes to improve clarity and phrasing.

§ 916.9(g)(1)(A)(3) [§ 936.9(g)(1)(A)(3), § 956.9(g)(1)(A)(3)] This section is proposed to be modified to revise the “drainage area determination” office-based method for Class II-L identification. The most significant modification is the proposed use of “continuous streamflow monitoring data” in this determination method. A second proposed addition is the modifier “potential” at the end of last sentence in this section, consistent with the use of this same modifier in Section 916.9(g)(1)(A)(1). Together these proposed changes are intended to clarify the process for quantifying drainage area in this method and improve language consistency with the other office-based methods specified in the existing regulation.

§ 916.9(g)(1)(B) [§ 936.9(g)(1)(B), § 956.9(g)(1)(B)] This section is proposed to be modified to revise the field verification methodology for identification of Class II-L watercourses. The proposed changes specify measurable features or observable characteristics such as “channel morphology,” “significant flow contribution,” “aquatic animal and plant life,” and “channel substrate” that can be utilized for quantifiable determinations of watercourse classification. These proposed modifications are intended to clarify

the process and metrics by which Class II watercourses may be evaluated for classification purposes in harvest planning documents.

§ 916.9(g)(1)(D) [§ 936.9(g)(1)(D), § 956.9(g)(1)(D)] The modifications to this section are proposed to further specify the types of documentation that may be used by a harvesting plan proponent to explain how a Class II-L determination was made. Such documentation can include “photographs,” “detailed analysis of potential stream temperature effects,” or “other documentation depicting Class II flow regime and/or channel characteristics.” These proposed modifications are intended to clarify what is meant by the term “documentation” in this section of the existing regulation.

§ 916.9(g)(1)(E) [§ 936.9(g)(1)(E), § 956.9(g)(1)(E)] The proposed modifications to this section specify that the maximum protection distance for a Class II-L watercourse is one-thousand feet (1000 ft) or the total length of Class II, whichever is less. These changes make explicit the Board’s intended protection distance for Class II-L watercourses. The existing rule language appears to have led to rule interpretation questions between the regulated public and State regulators.

NECESSITY

Class II watercourses are defined in the Forest Practice Rules Section 916.5 [936.5, 956.5] as those in which fish are always or seasonally present offsite within 1000 feet downstream and/or provide aquatic habitat for non-fish aquatic species. Class II-L watercourses are newly defined in Forest Practice Rules Section 916.9(g) [936.9(g), 956.9(g)] as those that, “can supply water and nutrients to a Class I watercourse during the month of July during an average hydrologic year; can supply coarse and fine sediment to the Class I channel; and may be able to supply wood of a size that would function as large wood for the Class I watercourse.” Within the distinction between these two classifications is an implication of considerable import to timber owners and managers: the extent to which timber within a Class II-L watercourse zone may be managed for commercial purposes.

According to some sources, the current interpretation of the Class II-L regulations has resulted in a greater number of watercourses being classified with that moniker. Regardless of the veracity of these claims, there is a clear dispute between regulated and regulator over the literal interpretation of the existing rule language. The Board’s resolution of this dispute through consideration of regulatory amendments would at a minimum ensure regulatory certainty for timber owners and managers. It would similarly provide clarity for those charged with enforcement of the regulations and review of proposed timber harvesting plans.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD’S REASONS FOR REJECTING THOSE ALTERNATIVES

The following alternatives are under consideration by the Board:

Alternative #1: No Action – Do Not Adopt Regulation

This alternative would result in no change to the current interpretation of the Class II-L identification and minimum protection distance. CAL FIRE would likely continue to enforce a disputed interpretation of the intent of the regulation. This in turn would likely lead to further public testimony and discord over the intent and practical effects of CAL FIRE's interpretation.

Public testimony to date has indicated that a consensus amendment to the existing regulation may not be achievable, at least in the near term. As such, this alternative is expected to remain viable throughout deliberations on the proposed regulation.

Alternative #2: Adopt Portion of Regulatory Proposal to Clarify Class II-L Protection Distance.

This alternative would result in the Board's adoption of proposed amendments to 916.9(g)(1)(E) for the purpose of clarifying the intended Class II-L protection distance. Amendments to the methods for identification of Class II-L watercourses would not be incorporated in this alternative.

Though a number of different Class II-L identification methods and strategies have been discussed in the Board's Forest Practice Committee, no clear consensus on any one option has been reached to date. However, the protection distance amendment has been consistently supported by state harvest planning review agencies. Though this alternative would establish an inflexible protection distance, it does provide regulatory certainty by clearly articulating the Board's expectation.

Adoption of this option would only partially satisfy the Board's objectives for the rulemaking effort. However, this option remains a viable alternative to "no action."

Alternative #3: Adopt Regulatory Modifications as Proposed Without Additional Revision.

This alternative would result in adoption of the rulemaking proposal as currently presented. No further substantive revisions to the rule text would be considered or presented for comment in further public noticing. The Board would take action to adopt the regulations following the initial 45-day Notice hearing.

Though the Board's objective is to adopt clarifying amendments to the existing regulations, it seems unlikely that the proposed rule text would be adopted as presented and without further modification. The Board's Forest Practice Committee reviewed a number of competing versions of the proposed rule text before the Board's decision to publicly notice the rule text in its current form. In making its recommendation for 45-day Notice publication, the Forest Practice Committee acknowledged that public review and comment would help further inform the composition of the rule text.

Regardless, this alternative is preferable to the partial solution of Alternative #2 and status quo of Alternative #1.

Alternative #4: Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process.

Board staff is currently most supportive of this alternative as it represents a solution based upon the greatest degree of consensus achievable. This alternative of course optimistically presumes that broader agreement on revised rule language is possible through the formal noticing process. Public and agency testimony to date in Forest Practice Committee meetings would seem to indicate that there is room for consideration of rule text revisions. Representatives from all constituencies would appear to agree that clarifying rule text revisions are necessary to reduce the potential for future rule interpretation issues.

The Board's Forest Practice Committee determined, following a number of months of public meetings and testimony, that opening the formal comment period was desirable. In this way, the broader public could be canvassed for perspectives and possible rule text modifications. The more formal 45-day public noticing process has been shown to elicit greater response to proposed rulemaking than the Committee venue. Board staff anticipates that the formal rulemaking process will ensure resolution of the interpretation questions that precipitated the Forest Practice Committee's deliberations.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. The Board's rulemaking process was determined to be categorically exempt from environmental documentation in accordance with 14 CCR 1153(b) (1), Declaration of Categorical Exemptions.

The proposed regulatory amendments would be added elements to the State's comprehensive Forest Practice Program under which all commercial timber management is regulated. The Board's Forest Practice Rules along with the Department of Forestry and Fire Protection's (CAL FIRE's) oversight of Rule compliance function expressly to prevent adverse environmental effects. The existing Rule section that is considered for modest amendment in this rulemaking proposal provides specific protections for watercourses in watersheds that provide habitat for anadromous salmonid fish species.

Harvesting plans contain a mix of avoidance and mitigation measures that are specifically designed by a licensed professional forester to reduce the risk for potential adverse effects. Each harvesting plan also contains a comprehensive cumulative effects analysis utilized in part to identify potential risks and effects as an aid to the forester's avoidance and mitigation measure development. State, local, and federal agency representatives review every harvesting plan prior to a

decision as to approval or denial. State representatives continue with compliance inspections of approved plans until the conclusion of the plan's lifespan. Where Forest Practice Rule standards or approved plan provisions have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

In summary, the proposed regulation will not result in significant adverse environmental effects. The regulation is an element of a comprehensive avoidance and mitigation program for commercial timber harvesting activities.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

There are no additional costs to any state agency, nor any state-mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Division 4 (commencing with Section 17500) of the Government Code because of any duties, obligations, or responsibilities imposed on state or local agencies or school districts. This order can be accomplished with no additional net costs or where such costs exist they are entered into voluntarily. This order does not create any savings or additional costs of administration for any agency of the United States Government over and above the program appropriations made by Congress.

There are no mandates to local governments or school districts.

The proposed regulations would provide a measure of regulatory certainty in resolution of ongoing Forest Practice Rule interpretation questions. It is speculated that this certainty could provide a minor level of cost savings to the affected regulated public.

The Board of Forestry has determined that no statewide alternative considered would be more effective in carrying out the purpose for which this regulation was adopted and would be as effective and least burdensome to affected private persons than the proposed action.

The following economic impact analysis is intended to satisfy the requirements of the Administrative Procedures Act, Government Code Section 11346.3(b).

I. Will the proposed regulation create or eliminate jobs within the State of California?

The proposed regulation is an amendment to existing regulation and will not significantly affect jobs in California. The regulation is compelled by a conflict between the regulated public and regulatory agencies as to the interpretation of a portion of Forest Practice Rule Section 916.9, "Protection and Restoration in Watersheds with Threatened or Impaired Values."

II. Will the proposed regulation create new businesses or eliminate existing businesses within the State of California?

The proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California. The regulatory amendments clarify the intent of the Board with regard to existing Class II-L watercourse identification methods and protection measures. As proposed, the Forest Practice Rule amendments are intended to improve regulatory certainty for the regulated public.

III. Will the proposed regulation result in the expansion of businesses currently doing business within the State of California?

The proposed regulation will not result in the expansion of businesses currently doing business within the State. The regulatory amendments as proposed represent a modest revision to existing forest practice regulations and are only intended to improve clarity and certainty in their application.

IV. Will the proposed regulation provide benefits to the health and welfare of California residents, worker safety, and the state's environment?

The regulation as proposed does not provide benefits to the health and welfare of California residents, improve worker safety. It is possible that the regulation would be of some unknown benefit to the state's environment. However, it is not clear to what extent the regulation would alter the existing implementation and enforcement of regulations for watercourse protection. If adopted, monitoring of the differences between implementation of the pre-existing and revised regulations could expose a discernable difference in environmental protection.

V. What is the estimated expense of proposed regulation upon those most affected?

Commercial timberland owners and managers are the most likely to be affected by the regulation. However, it is unclear to what extent the proposed regulation would alter the existing costs for timber harvest permitting and operations. Those who choose to conduct commercial harvests of their timberlands are currently obligated to comply with the permitting and rule requirements of the State Forest Practice Act and Rules. This regulatory construct is fully compliant with the California Environmental Quality Act. The harvesting permit required for commercial operations is considered the functional equivalent of an Environmental Impact Report. According to a March 2005 report by Thompson and Dicus entitled, The Impact of California's Changing Environmental Regulations on Timber Harvest Planning Costs, the cost of a one-time harvest permit is in excess of thirty-thousand dollars (\$30,000.00). The permit cost does not include the annual or periodic

expenses of property tax, insurance, or management activities (erosion control; water, flora, and fauna monitoring; tree planting and timber stand improvement work; pre-commercial thinning and pruning; etc.)

The regulation as proposed would not significantly alter harvest permitting costs or the ongoing expenses identified above. It is conceivable that the regulation could result in some level of increased access to manageable timber sources. This could translate to increased harvestable value. However, it may also result in less access, or the same access currently permitted. Monitoring of the regulation's implementation could yield greater understanding of the economic consequences. Otherwise, the Board can only speculate on the expense of the proposed regulation in comparison to existing regulations.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board of Forestry finds that the adoption of these regulations will not have a significant adverse economic impact on small businesses. There will be no reporting or record keeping requirements in these regulations and compliance requirements are set out in the *Initial Statement of Reasons* and the proposed text of the regulations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. California Forest Practice Rules, Title 14, Division 1.5, Chapter 4, Subsections 4, 5, 6, Article 6 – Watercourse and Lake Protection, Section 916.9.
2. Large Class II Flow or Drainage Area Based Concept Paper – Background Information Supporting the Concept of Large Class II Watercourses, Cafferata, P., Department of Forestry and Fire Protection, June 1, 2009.
3. The Impact of California's Changing Environmental Regulations on Timber Harvest Planning Costs. Thompson, R., Dicus, C., California Polytechnic University San Luis Obispo, March 2005.

Pursuant to Government Code 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed staff to review the Code of Federal Regulations. The Board staff determined that

no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations,
and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of
Regulations.

All other text is existing rule language.

Class II-L Identification Methods Amendments, 2012

[45-day Notice Published September 7, 2012]

Title 14 of the California Code of Regulations (14 CCR):

Division 1.5, Chapter 4, Subchapters 4, 5, 6, Article 6 – Watercourse and Lake Protection

Amend:

§§ 916.9 [936.9, 956.9](c)(4) Protection and Restoration in Watersheds with Threatened
or Impaired Values.

§§ 916.9 [936.9, 956.9](g) Class II Watercourses

Amend 14 CCR § 916.9(c)(4) [§ 936.9(c)(4), § 956.9(c)(4)]:

(3) ***** an additional sediment filter on steeper slopes with high or
moderate erosion hazard rating when tractor operations are proposed.

(4) Class II large watercourses (Class II-L): The primary objective is to
maintain, protect or restore the values and functions of Class II-L type watercourses
described below. Class II-L type watercourses: (i) can supply significant influx of water
and nutrients to a Class I watercourse during the month of July during a year of average
precipitation and runoff as derived from long-term average precipitation data sets
available from CAL FIRE, U.S. Geological Survey, or National Oceanic and Atmospheric
Administration (NOAA), (ii) can supply coarse and fine sediment to the Class I channel,
and (iii) may be able to supply wood of a size that would function as large wood for the
Class I watercourse. Recruitment, delivery and retention of large wood in Class II- L
type watercourses is also critical, as large wood increases sediment storage and
decreases the rate of sediment transport to fish-bearing Class I watercourses. Other
objectives stated in 14 CCR § 916.9 [936.9, 956.9] subsections (c)(1) and (2) above for

the Core Zone and Inner Zone are also desired objectives for Class II-L type watercourses.

(5) A primary objective for all WLPZs is to implement practices to maintain****
(f) **Class I** watercourses – *****which delimb harvested trees on pathway over which heavy equipment would travel.

Note: Authority cited: Public Resources Code Sections 4551 and 4562.7. Reference: Public Resources Code Sections 4512, 4513, and 4551.5.

Amend 14 CCR § 916.9(g) [§ 936.9(g), § 956.9(g)]

(g) Class II watercourses –

The following are the minimum requirements for Class II WLPZ delineation and timber operations. Differing rules are specified for watersheds in the coastal anadromy zone, the Southern Subdistrict of the Coast Forest District, and areas outside the coastal anadromy zone. WLPZ width ranges from 50 to 100 feet slope distance, depending on side slope steepness in the WLPZ and the watercourse type.

(1) Determine the Class II Watercourse Type: Class II watercourses are composed of two types - Class II-S (standard) watercourses and Class II-L (large) watercourses. A Class II-L watercourse is defined as a Class II watercourse that: (i) can supply significant influx of water and nutrients to a Class I watercourse during the month of July during an average hydrologic year; (ii) can supply coarse and fine sediment to the Class I channel; and (iii) may be able to supply wood of a size that would function as large wood for the Class I watercourse. Identification of Class II-L watercourse types shall be based on one or more of the office methods specified under 14 CCR § 916.9 [936.9, 956.9] subsection (g)(1)(A) and verified in the field by direct observation as ~~methods~~ specified under 14 CCR § 916.9 [936.9, 956.9],

subsection (g)(1)(B). Class II-S watercourses are those classified as Class II watercourses pursuant to 14 CCR § 916.5 [936.5, 956.5], but do not meet the definition of a Class II-L watercourse.

(A) Office-based ~~approaches~~ methods to identify potential Class II-L watercourses:

1. Stream order: After classifying the watercourses in an area pursuant to 14 CCR § 916.5 [936.5, 956.5], map all Class II watercourses in the area of consideration on current 1:24,000 scale U.S. Geological Survey topographic maps and determine stream order following the stream order method in 14 CCR § 895.1. Second order and third order Class II watercourses are potentially Class II-L watercourses.

2. “Blue Line” streams: Watercourses mapped with a blue or black line on current 1:24,000 scale U.S. Geological Survey topographic maps that are not Class I are inferred to be Class II-L watercourses.

3. Drainage area: A calculated drainage area for an ownership or local region, known to produce mid-late summer flow based on continuous streamflow monitoring data, past plan experience, or local knowledge ~~for an ownership or local region~~ extrapolated over the ownership or local area can indicate a potential Class II-L watercourses.

(B) ~~Field-based approaches to identify potential Class II-L:~~ Determination of Class II-L watercourses shall be verified in the field by direct ~~channel~~ observations of channel morphology including width and depth at bankfull stage, gradient, substrate, and flow regime, supplemented with and local experience using one or more of the following approaches or site-specific documentation. Class II-L watercourses have the following observable characteristics:

1. Significant flow contribution to a Class I watercourse. ~~Determine by direct observation or by local knowledge of common mid-summer flow conditions if office mapped Class II-L watercourses contribute flow to a Class I watercourse at least through approximately July 15th following a year with at least average precipitation.~~ The

1 presence of springs or seeps, and aquatic animal and plant life that require perennial or near
2 perennial flow may indicate a significant flow regime.

3 **2. ~~Observe channel characteristics such as channel width at~~**
4 **~~bankfull stage, channel depth at bankfull stage, channel slope, mean entrenchment ratio, the~~**
5 **~~presence of springs or seeps, and the presence of aquatic animal and plant life that require mid-~~**
6 **~~summer flow. Channel substrate that includes coarse sediment, and evidence of a flow regime~~**
7 **~~capable of transporting coarse sediment (gravel and small cobble one to five (1-5) inches in~~**
8 **~~diameter or greater) to a Class I watercourse during peak flows.~~**

9 **3. ~~Use continuous streamflow monitoring data from headwater~~**
10 **~~watercourses to determine the watershed drainage area necessary to initiate mid-summer~~**
11 **~~streamflow for a given ecoregion and extrapolate this data to other headwater basins in that~~**
12 **~~ecoregion. Sufficient channel width and depth at bankfull stage to allow transport of large wood,~~**
13 **~~defined as >12 inches in diameter and six (6) feet in length, to receiving Class I waters, during~~**
14 **~~peak flows.~~**

15 **(C)** Based on (A) and (B) above, make a determination if the portion of the Class II
16 watercourse being evaluated meets the definition of a Class II-L watercourse in 14 CCR § 916.9
17 [936.9, 956.9], subsection (c)(4).

18 **(D)** Include documentation in the plan explaining how the Class II-L determination(s)
19 were made within the plan area. Photographs, detailed analysis of potential stream temperature
20 effects on receiving Class I waters, and/or other documentation depicting Class II flow regime
21 and/or channel characteristics may be submitted by the RPF to support determination.

22 **(E)** All Class II-L watercourses designated above shall incorporate requirements stated
23 in 14 CCR § 916.9 [936.9, 956.9], (g)(2) for a maximum distance of one-thousand (1000) feet,
24 or total length of Class II-L, which ever is less, measured from the confluence with a Class I
25 watercourse.

(2) Class II WLPZ widths and operational requirements: All Class II WLPZs shall be composed*****

Note: Authority cited: Public Resources Code Sections 4551 and 4562.7. Reference: Public Resources Code Sections 4512, 4513, and 4551.5.

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